

Message Text

PAGE 01 STATE 159898
ORIGIN STR-07

INFO OCT-01 EUR-12 IO-13 ISO-00 STRE-00 COME-00 TRSE-00
LAB-04 SIL-01 AGRE-00 OMB-01 CEA-01 CIAE-00
DODE-00 EB-08 FRB-03 H-01 INR-10 INT-05 L-03
NSAE-00 NSC-05 PA-01 CTME-00 AID-05 SS-15 ITC-01
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E.O. 11652: N/A

TAGS: MTN, EEC, ETRD

SUBJECT: GOVERNMENT PROCUREMENT

1. THE FOLLOWING ARE INSTRUCTIONS REGARDING THE VARIOUS
PAPERS HAND-CARRIED TO WASHINGTON BY KEN KUWABARA.

2. WE BELIEVE IT IS IMPORTANT FOR THE DEVELOPED COUNTRIES
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PAGE 02 STATE 159898

TO CONSOLIDATE A POSITION ON S&D IN GOVERNMENT PROCUREMENT.
OUTSIDE OF MEETINGS EVERY EFFORT SHOULD BE MADE TO CONVINCE
THE EC AND NORDICS, AS WELL AS OTHER DC'S, THAT LDC NON-
ADHERENCE TO THE CODE IS PREFERABLE TO AGREEMENT TO
POLITICALLY UNACCEPTABLE PROVISIONS ON S AND D FOR LDC'S.
WE FURTHER BELIEVE U.S. INTEREST IS BEST SERVED BY DEVIS-
ING A CODE WHERE A MAXIMUM NUMBER OF LDC'S ASSUME MEANING-
FUL OBLIGATIONS. WE HAVE STUDIED EC-NORDIC DRAFT OF GP
CODE SECTION ON SPECIAL AND DIFFERENTIAL TREATMENT FOR
LDC'S AND FIND IT USEABLE AS A BASIS FOR DISCUSSION ON THIS

SUBJECT WITH THE FOLLOWING MODIFICATIONS AND/OR CLARIFICATIONS. DEL SHOULD ALSO BE GUIDED BY STATE 115879 OF MAY 6, 1978.

3. WE CANNOT SUPPORT PARA. 1(C) BECAUSE WE DO NOT BELIEVE THE CODE SHOULD EXPLICITLY ENDORSE THE USE OF PROCUREMENT AS AN ECONOMIC DEVELOPMENT OR PROTECTIONIST TOOL. RATHER

THE CODE SHOULD ACKNOWLEDGE THAT LDCS HAVE LEGITIMATE BALANCE OF PAYMENTS AND DEVELOPMENT GOALS AND THEIR PROCUREMENT POLICIES SHOULD NOT CONFLICT WITH THESE GOALS.

4. IN LIGHT OF THE ABOVE GENERAL VIEWS WE DEEM IT ADVISABLE TO OFFER THE FOLLOWING LANGUAGE IN SUBSTITUTION FOR PARA 3 OF THE EC NORDIC DRAFT: "WITH THE VIEW TO INSURING THAT DEVELOPING COUNTRIES ARE ABLE TO ADHERE TO THE AGREEMENT CONSISTENT WITH THEIR DEVELOPMENT OBJECTIVES, FULL CONSIDERATION OF THOSE OBJECTIVES WILL BE GIVEN IN NEGOTIATING THEIR COVERAGE UNDER CODE. THE COMMITTEE WILL BE EMPOWERED TO GRANT SPECIFIC AND TIME LIMITED DEROGATIONS FROM CODE OBLIGATIONS WHEN REQUESTED BY A SIGNATORY DEVELOPING COUNTRY. EACH REQUEST TO THE COMMITTEE SHOULD BE ACCCOMPANIED BY RELEVANT LAWS, REGULATIONS, AND PRO-LIMITED OFFICIAL USE
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PAGE 03 STATE 159898

CEDURES, AND ANY OTHER INFORMATION THAT MAY BE USEFUL TO THE COMMITTEE FOR CONSIDERATION OF THE MATTER. SUCH DEROGATIONS SHALL BE REVIEWED PERIODICALLY BY THE COMMITTEE. SUCH REVIEWS SHALL TAKE INTO ACCOUNT THE DEGREE OF DEVELOPMENT IN THE AREA OF DEROGATION."

5. REGARDING PARA 4 THE WORD "OFFERS" COULD EASILY BE CONFUSED WITH ENTITY OFFERS AND SHOULD BE CHANGED TO "TENDERS". WE SUGGEST THE FOLLOWING FORMULATION FOR PARA 4: "WITH REGARD TO TENDERS PRESENTED BY SUPPLIERS FROM DEVELOPING COUNTRIES, SIGNATORIES WILL APPLY TARIFF RATES IN ACCORDANCE WITH AND WITHIN THE LIMITS OF THEIR OWN GENERALIZED SYSTEM OF PREFERENCES."

6. THE U.S. IS NOT ABLE TO ACCEPT PARA 6 OF THE DRAFT PROPOSAL FOR A NUMBER OF REASONS, NOT THE LEAST OF WHICH IS THE FACT THAT IT WOULD SERVE AS AN INDUCEMENT TO THE LDCS NOT TO JOIN THE CODE. THE U.S. SUGGESTS THAT IN ITS PLACE WE OFFER THE FOLLOWING LANGUAGE: "THE SIGNATORY GOVERNMENTS OFFER TECHNICAL ASSISTANCE TO THOSE NONSIGNATORY DEVELOPING COUNTRIES CLASSIFIABLE AS LEAST DEVELOPED." DEL SHOULD REMEMBER THAT OBLIGATIONS SUCH AS THIS ARE SUBJECT TO BUDGETARY CONSTRAINTS.

7. PARA 7 OF THE EC NORDIC DRAFT SHOULD BE DELETED; IT DUPLICATES THE PROVISION OF PARA 4 AND IT IS NOT NECESSARY.

TO THE EXTENT THAT THE EXISTING TEXT IS INTENDED TO TAKE ACCOUNT OF A SPECIFIC NORDIC PROBLEM, WE SUGGES- THAT THE FORMULATION WE HAVE OFFERED FOR PARAGRAPH 4 FULLY TAKES THAT INTO ACCOUNT.

8. THE EC-NORDIC PROPOSALS REGARDING TECHNICAL ASSISTANCE AND INFORMATION ARE ALL KEYED TO BILATERAL CONTACTS. THE U.S. BELIEVES IT IS APPROPRIATE FOR DC'S TO PROVIDE TECHNICAL ASSISTANCE (SUCH AS THAT IN PARA 9, 10 OF THE DRAFT) CONCERNING PROCUREMENTS IN THEIR OWN MARKET ON A BILATERAL LIMITED OFFICIAL USE
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PAGE 04 STATE 159898

BASIS. HOWEVER, OTHER TYPES OF INFORMATION AND ASSISTANCE WOULD BE MORE APPROPRIATELY AND EFFICIENTLY PROVIDED THROUGH A MULTILATERAL INFORMATION AND TECHNICAL ASSISTANCE CENTER ADMINISTERED BY THE COMMITTEE OF SIGNATORIES THROUGH THE GATT SECRETARIAT. EACH SIGNATORY COULD PROVIDE THE INFORMATION ENUMERATED IN PARAS. 11-14 TO THE SECRETARIAT WHICH WOULD THEN DISPENSE IT TO INTERESTED LDCS. GENERAL TECHNICAL ASSISTANCE TO ENABLE LDCS TO ADHERE TO CODE OBLIGATIONS ALSO SHOULD BE ADMINISTERED MULTILATERALLY, POSSIBLY THROUGH TEAMS OF GOVERNMENT EXPERTS SENT TO ADVISE LDCS ON SETTING UP AND MANAGING THEIR PROCUREMENT SYSTEMS. U.S. IS PREPARED AS WELL TO CONSIDER PROVIDING BILATERAL ASSISTANCE TO LDC SIGNATORIES ON REQUEST, WITHIN THE LIMITS OF BUDGETARY CONSTRAINTS.

9. WE CONTINUE TO NEED UNDERSTANDING OF IMPACT OF "JUDICIAL DECISIONS" IN PARA 1 OF PART VI (INFORMATION AND REVIEW). JUDICIAL DECISIONS ON GOVERNMENT PROCUREMENT CAN ORIGINATE IN ANY ONE OF THE U.S. COURTS AND BE PUBLISHED IN THE REGULAR VOLUMES OF DECISIONS OF THOSE COURTS ALONG WITH THEIR DECISIONS ON ALL OTHER SUBJECTS. OBVIOUSLY WE WILL HAVE NO PROBLEM IF WE CAN SATISFY THE REQUIREMENTS OF THIS PARAGRAPH BY MERELY LISTING THE NAMES OF THE VARIOUS COURT REPORTS IN THE ANNEX. WE WOULD HAVE A PROBLEM HOWEVER, IF WE WERE UNDERTAKING AN OBLIGATION TO COLLATE THESE DECISIONS IN SOME NEW PUBLICATION. THE PROBLEM IS CLEARLY MINIMAL, HOWEVER, SINCE THE DECISIONS ARE QUICKLY REFLECTED IN THE REGULATIONS. THE OUTSTANDING PROBLEM IN PARA 8 STILL HINGES ON WHETHER WE WILL HAVE EX POSTE PUBLICATION OF AWARDS. IF THERE IS, OBVIOUSLY SINGLE TENDERING AWARDS WILL BE TAKEN CARE OF IN THAT WAY. FAILING REASONABLE EX POSTE PUBLICATION, WE WILL NEED SUB-PARA (C) AND WE CONSIDER IT NECESSARY THAT SUCH A REPORT BE PROVIDED AT LEAST
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PAGE 05 STATE 159898

AS FREQUENTLY AS EVERY SIX MONTHS.

10. CONCERNING-THE EC PAPER (IN RESPONSE TO-THE SECRETARIAT PAPER) ON THEFINAL PROVISIONS WE-HAVE THE FOLLOWING COMMENT

A) WE ARE SOMEWHAT AT A LOSS TO UNDERSTAND WHAT IS INTENDED TO BE COVERED THE LAST TWO LINES OF PARAGRAPH 1 UNDER "SIGNATURE AND ACCEPTANCE". WE ASSUME THAT IT IS INTENDED TO COVER SUCH THIN;S AS ANNEXES AND OTHER ATTACHMENTS TO THE AGREEMENT. IF THIS IS THE CASE WE

WOULD PREFER IT TO BE STATED IN THOSE TERMS. IF THERE ARE OTHER PROBLEMS INVOLVED WE WOULD THEN HAVE TO COME BACK WITH SOME OTHER FORMULATION.

B) REGARDING PARAGRAPH 3 OF THE SAME SUBSECTION WE WOULD PREFER THAT THE PARA BE UNBRACKETED. FOR THOSE WHO ARE RESPONSIBLE FOR THE BRACKETS, IT SHOULD BE POINTED OUT TO THEM THAT THE PERMISSIVE FORM "MAY" IS USED TO APPLY THE RULE OR NOT.

C) ENTRY INTO FORCE-RATHER THAN HAVING ENTRY INTO FORCE DEPEND UPON ACCEPTANCE OF CODE BY ONE-HALF OF THE PARTIES, WE BELIEVE IT WOULD BE PREFERABLE TO LEAVE THIS PROVISION FLEXIBLE UNTIL AGREEMENT IS READY FOR SIGNATURE. TO THIS END WE WOULD RECOMMEND THAT, FOR PRESENT, ENTRY INTO FORCE DEPEND UPON "ACCEPTANCE OF (X) PARTIES." APPROPRIATE NUMBER COULD BE INSERTED WHEN WE HAVE A BETTER IDEA OF HOW MANY SIGNATURES THERE WILL BE. OF GREATER IMPORTANCE IS NEED FOR INFORMAL UNDERSTANDING AMONG KEY COUNTRIES (E.G. U.S., EC, CANADA, JAPAN) THAT ACCEPTANCE BY ANY ONE WILL DEPEND UPON ACCEPTANCE BY ALL.

D) IT IS OUR UNDERSTANDING THAT SUBPARA 2 UNDER ACCESSION HAS BEEN DELETED.

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PAGE 06 STATE 159898

E) IT IS ALSO OUR UNDERSTANDING THAT FOOTNOTE 1 ON PAGE 2 AND THE LAST CLAUSE ("INCLUDING THE PARTICULAR DEVELOPING", ETC.) IN PARA 2 UNDER NEGOTIATIONS HAVE BEEN DELETED.

F) WE BELIEVE THAT ALL SIGNATORIES MUST COMMIT THEM-SELVES TO A MINIMUM TIME FRAME SUFFICIENT FOR ALL TO DETERMINE WHETHER THE AGREEMENT WILL IN FACT WORK. CONSEQUENTLY WE WOULD INSERT AT THE END OF THE FIRST SENTENCE OF THE WITHDRAWAL PARAGRAPH: "AT ANY TIME AFTER THE THIRD YEAR IN WHICH THIS AGREEMENT HAS ENTERED INTO FORCE WITH RESPECT TO ANY SIGNATORY GOVERNMENT." N.B. - DEL SHOULD REFRAIN, IF POSSIBLE, FROM MOVING ON THIS SUB-PARA OF INSTRUCTION UNTIL WE HAVE HAD OPPORTUNITY FOR FURTHER

CONVERSATION WITH ADVISORY GROUPS.

11. EC PROPOSAL TO REDRAFT PARA 14(E) OF W/158-RETURNING TRAVELERS REPORT EC INTENTION RE PARA IS ONLY TO PROVIDE FOR THE POSSIBILITY OF MORE THAN ONE PROTOTYPE ARISING FROM THE SITUATION DESCRIBED. IF THIS IS CORRECT CAN'T THE PROBLEM BE HANDLED BY CHANGING THE INTRODUCTORY WORDS OF THE EXISTING TEXT TO READ: "WHEN A PROTOTYPE OR PROTOTYPES ARE DEVELOPED, ETC."?

12. NEW EC TEXT ON DUMPING PRICES - WE NEED EXPLANATION OF PURPOSE FOR THIS NEW PROVISION. CLEARLY EVERY SIGNATORY HAS THE RIGHT UNDER THE GP CODE TO APPLY ITS DUMPING LAW TO ANY PROCURED PRODUCTS. IF THE EC CONCERN IS ONE OF STOPPING, BEFOREHAND, A BID WHICH IS SO LOW AS TO BRING UP THE QUESTION WHETHER THE TENDERER WILL BE ABLE TO PERFORM AT SUCH A LOW PRICE, IT IS OUR UNDERSTANDING THAT THE EXISTING TEXT OF THE CODE ALLOWS THE PROCURING AGENCY TO INVESTIGATE ANY BID ON THAT BASIS AND THROW IT OUT IF
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PAGE 07 STATE 159898

IT IS FOUND TO BE SO. WE ARE FEARFUL THAT THE PROPOSED TEXT, AMONG OTHER THINGS, MIGHT BE USED TO WHIP-SAW LOW BIDDERS INTO HIGHER PRICING.

13. IN RESPONSE TO NEWKIRK TELECON REQUEST TO POMERANZ (JUNE 22) DEL AUTHORIZED TO TABLE FORMALLY THE U.S. ENTITY OFFER LIST PROVIDED IN STATE 63022 AND TO FORWARD TO SUBJECT COUNTRIES THE U.S. REQUEST LISTS CONTAINED IN TPSC 78-70. VANCE

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